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State v. Soto Respondent's Brief Dckt. 43250

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43250
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2012-10316
)	
JOSE MIGUEL SOTO,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Soto failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of 15 years, with five years fixed, imposed following his guilty plea to possession of methamphetamine with a persistent violator enhancement?

Soto Has Failed To Establish That The District Court Abused Its Sentencing Discretion

In 2012, the state charged Soto with possession of methamphetamine with a persistent violator enhancement, driving without privileges, possession of marijuana, and possession of drug paraphernalia. (R., pp.100-02.) Pursuant to a binding Rule 11

plea agreement, Soto pled guilty to possession of methamphetamine with a persistent violator enhancement, the state dismissed the remaining charges, and the parties stipulated to a unified sentence of 15 years, with five years fixed, with a period of retained jurisdiction. (R., pp.107-14.) As part of the plea agreement, Soto waived his right to appeal his conviction and sentence. (R., pp.99, 110.) The district court followed the plea agreement and imposed a unified sentence of 15 years, with five years fixed, and retained jurisdiction. (R., pp.118-20.) Following the period of retained jurisdiction, the district court suspended Soto's sentence and placed him on supervised probation for four years. (R., pp.126-29.)

After Soto violated his probation by using methamphetamine on several occasions and absconding supervision, the district court revoked his probation and ordered the underlying sentence executed. (R., pp.134-37, 147-48; Judgment on Probation Violation (Augmentation).) Soto's public defender filed a timely Rule 35 motion for a reduction of sentence three days later, on February 9, 2015. (R., pp.162-63.) On February 24, 2015, Soto filed a pro se Rule 35 motion for reduction of sentence, despite the fact that he was still represented by a public defender. (R., p.170-78.) Following a hearing on the Rule 35 motion, the district court denied the motion. (R., pp.185-86.) Soto filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.187-90.)

Soto asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of the letters of support from his mother and two sisters and his claim that the district court did not consider the letters. (Appellant's brief, pp.4-6.) Because Soto waived his right to appeal his sentence, he may challenge

only the district court's decision not to reinstate him on probation pursuant to his Rule 35 request for leniency; he may not challenge the length of his sentence.¹ Soto has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Soto must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. The trial court may, in its discretion, decide a motion to modify a sentence without the admission of additional testimony and without oral argument. I.C.R. 35. This discretion is abused only if the court unreasonably refuses to consider relevant evidence or otherwise unduly limits the information considered. State v. Bayles, 131 Idaho 624, 626, 962 P.2d 395, 397 (Ct. App. 1998); State v. Torres, 107 Idaho 895, 898, 693 P.2d 1097, 1100 (Ct. App. 1984).

Soto claims that the district court failed to consider the letters of support from his mother and two sisters because the court indicated, at the hearing on Soto's rule 35 motion, that it did not receive Soto's pro se Rule 35 motion and the attachments (file-stamped February 24, 2015), filed by Soto while he was represented by counsel. (R., pp.162-63, 170-78, 185-86; 3/27/15 Tr., p.12, Ls.9-13.) However, the letters Soto provided in support of his Rule 35 motion were already part of the record before Soto

¹ Soto's waiver of his right to appeal his sentence incorporates his right to appeal from the denial of a Rule 35 motion for sentence reduction absent the presentation of new evidence. State v. Rodriguez, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). As discussed in more detail below, Soto failed to support his Rule 35 motion with any information that could legitimately be characterized as new.

ever filed his Rule 35 motion – in fact, they are exact duplicates of the letters he provided a few months earlier, prior to his probation being revoked. (R., pp.176-78 (letters of support attached to Soto's pro se Rule 35 motion); PSI, pp.56-58 (confidential letters filed-stamped on 12/30/14); see also R., p.6 (12/30/14 entries indicating "Character Letters" were filed under seal).) Furthermore, Soto testified, at the Rule 35 hearing, that he had support from his mother and two sisters, which he believed would help him if he were to be reinstated on probation, and there is nothing in the record to indicate that the district court did not accept Soto's statements as true. (3/27/15 Tr., p.6, Ls.14-24.) Because the district court previously considered the exact letters Soto provided in support of his Rule 35 motion, and because the court accepted Soto's testimony with respect to his family support, it cannot be said that the district court unduly limited the information it was considering when it denied the motion.

Soto provided no new information in support of his Rule 35 motion, as the letters he provided were before the district court at the time that it revoked his probation. Information with respect to Soto's support from his mother and two sisters was also presented to the district court at the time of sentencing. (10/5/12 Tr., p.7, L.25 – p.8, L.2.) Because Soto presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Soto's Rule 35 motion for a reduction of sentence.

DATED this 4th day of February, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of February, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General